

Briefing on FEDLINK Faxon/Rowecom Contracts

2/12/03

Background:

Faxon (subsidiary of Rowecom) is one of 4 serials agents that developed basic ordering agreements (BOAs) with FEDLINK in FY2000 following open competition. Under the terms established in the BOAs, FEDLINK libraries contract with these agents to place the orders for their journals and magazines with the various publishers, pay the publishers on behalf of the libraries, and then make sure the publishers deliver all issues of the journals.

Chronology:

1- In mid-December 2002 FEDLINK learned from a customer that Faxon had not yet placed orders with publishers for their January 2003 subscription starts.

2- On Dec. 19, FEDLINK's contracting officer sent a show cause letter to Faxon/Rowecom, giving them 10 days to demonstrate that they were fulfilling the terms of the FEDLINK BOA by placing orders with and paying publishers within 5 days of receiving title lists from authorized FEDLINK customers. Faxon responded timely to the show cause letter by providing reports on 30 FEDLINK customers with orders in the pipeline. Faxon was unable to demonstrate that all orders had been placed and paid for (in fact, the response demonstrated that many orders had not yet been placed).

3- In the meantime, Faxon publicly announced that Rowecom's parent, divine, Inc., was withdrawing financial support; therefore, Faxon/Rowecom would no longer have the resources to place and pay orders with publishers.

4- FEDLINK contracting officer proceeded to initiate terminations for default for 43 FEDLINK contracts with Faxon from FY02 and FY03 (for CY2003 subscriptions) based on Faxon's inability to fulfill contract terms. She also withdrew 15 contracts on which performance had not yet begun and curtailed issuance of all new contracts.

5- FEDLINK staff have proceeded to initiate public notices and other required actions to place all unencumbered customer funds with other serials agents.

6- On December 27, Susan Tarr was nominated to serve on an ad hoc steering committee of Rowecom creditors; this committee of 5 librarians and 5 publishers has been working to understand the financial condition of Rowecom and its parent, divine, while engaging viable serials agents in consideration of purchasing remaining assets to carry on the business. Through this investigation, it was fairly well established that Rowecom North America had received from libraries approximately \$58 million more in payments than it could execute in orders to publishers.

7- On January 27, Rowecom filed for bankruptcy under Chapter 11, with a pending letter of intent from EBSCO (another FEDLINK serials agent) to purchase Rowecom assets.

Current Status:

1- The OGC has been in touch with Dept. of Justice bankruptcy attorneys, who will represent the Library in bankruptcy proceedings. OGC has submitted a report to the Dept. of Justice estimating the level of FEDLINK's creditor status with the bankrupt Rowecom at approximately \$4.2 million.

2- FEDLINK staff are working with transfer pay customers who have unencumbered funds to place their serials orders through an alternative agent.

3- FEDLINK staff, with OGC guidance, are working with customers and the latest reports from Faxon to establish the exact amount of prepaid orders that were not placed and/or paid with publishers before the Rowecom bankruptcy. That amount needs to be documented for the bankruptcy proceeding.

4- Under the aegis of the ad hoc steering committee, many publishers have offered to grace libraries for their subscriptions through March; in addition, publishers have submitted a motion to the court whereby publishers will pick up the cost of continuing subscriptions for libraries, thereby assuming their creditor status in the bankruptcy. This offer applies if the EBSCO purchase is executed and EBSCO ultimately agrees to broker this arrangement between publishers and libraries.

5- If EBSCO does execute its purchase of Rowecom North America assets, FEDLINK may reinstate the FEDLINK contracts under which FEDLINK prepaid orders that were never placed or paid by Rowecom. Under reinstated contracts, FEDLINK customers will be able to take advantage of some publishers' willingness to assume the libraries' creditor standing in the Rowecom bankruptcy. Reinstatement will require approval by the bankruptcy court.

6- Published statements about the payback to creditors have estimated less than \$.50 on the dollar, but a more realistic figure (based on steering committee reports) is closer to \$.25 on the dollar.

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